

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEROME WILLIAMSON,

Defendant-Appellant.

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UNPUBLISHED  
February 19, 2002

No. 227638  
Oakland Circuit Court  
LC No. 99-167980-FC

Before: Neff, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

Defendant appeals as of right from jury trial convictions for kidnapping, MCL 750.349, carrying a concealed weapon, MCL 750.227, two counts of felonious assault, MCL 750.82, escape while awaiting trial for a misdemeanor, MCL 750.197(1), and illegal entry without the owner's permission, MCL 750.115(1). He was sentenced as a fourth habitual offender, MCL 769.12. We affirm.

On appeal, defendant first argues that he was denied a fair trial because the trial court failed to instruct the jury on consent as a defense to kidnapping. We disagree. Defendant failed to request this instruction and failed to raise an objection at trial, therefore, the issue is reviewed for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 766-767; 597 NW2d 130 (1999). Here, the trial court instructed the jury that it had to find that defendant confined the victim "against his will or by causing duress." These instructions were fair and adequately instructed the jury that the prosecution had to prove that the victim did not voluntarily, i.e., consent to, leave with defendant. See *People v Davis*, 122 Mich App 597, 604; 333 NW2d 99 (1983).

Further, the evidence included that defendant was holding a butcher knife to the victim's stepsister's throat when the victim allegedly agreed to take defendant to Detroit on the condition that defendant let his stepsister go. Defendant continued to possess the knife while in the victim's vehicle, held the knife to the victim's throat, and threatened to cut the victim's throat if he did not take defendant to Detroit. In addition, when the police were attempting to stop the victim's vehicle, defendant put the knife to the victim's chin and threatened to kill the victim if the police did not "back off." Consequently, the evidence did not support a jury instruction on consent; therefore, defendant failed to establish plain error and the issue is forfeited. See *Carines*, *supra*. Further, for these same reasons, defendant's claim that he was denied the

effective assistance of counsel because his attorneys did not request the instruction is without merit.

Next, defendant argues that he was denied a fair trial because the prosecutor made disparaging comments during his rebuttal argument, including characterizing the defense as a “smoke screen” and “smoke and mirrors.” We disagree. Defendant failed to object to these comments, therefore, to avoid forfeiture, defendant must demonstrate plain error that affected his substantial rights. See *Id.* at 752-753, 764; *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001).

Claims of prosecutorial misconduct are decided case by case after review of the record as a whole to determine whether the defendant was denied a fair trial. *People v Bahoda*, 448 Mich 261, 267; 531 NW2d 659 (1995). In this case, the challenged remarks were made during rebuttal argument and were largely responsive to defense counsel’s closing argument. A prosecutor’s responsive arguments must be considered in light of defense arguments. *People v Messenger*, 221 Mich App 171, 181; 561 NW2d 463 (1997); *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996).

Here, the prosecutor’s comments did not constitute a personal attack on defense counsel, but were permissibly responsive to defense arguments suggesting that the police were overzealous in their pursuit of defendant. See *People v Watson*, 245 Mich App 572, 592-593; 629 NW2d 411 (2001); *People v Howard*, 226 Mich App 528, 544-545; 575 NW2d 16 (1997). In addition, the prosecutor did not argue that defense counsel was intentionally attempting to mislead the jury but, rather, referred the jury to review the evidence and return a verdict that was supported by the evidence. See *Id.* Consequently, defendant has failed to demonstrate that plain error resulted from the comments.

Affirmed.

/s/ Janet T. Neff  
/s/ Mark J. Cavanagh  
/s/ Henry William Saad